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Supreme Court, U.S.
FILED

04-754 SEP 10 2004

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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 2004

MICHAEL R. WOOD,

Petitioner

vs.

FEDERAL AVIATION ADMINISTRATION,

Respondent

On Petition for Writ of Certiorari
To The United States Court of Appeals
For The District of Columbia Circuit

PETITION FOR A WRIT OF CERTIORARI

Michael R. Wood,
Counsel of Record and
Petitioner, Pro Se
6541 Elm Street
P.O. Box 842
McLean, Virginia 22101-0842
Phone: 1-800-971-5199
Fax No.: 1-801-327-3109

QUESTIONS PRESENTED

(1) Does an aircraft owner have Article III standing where his aircraft is banned under a current Stage 1 ban at a public airport, and additionally is banned under an expanded Stage 2 ban where such bans cause an impairment of his right to travel between public airports or his own interests whether they are economic or non-economic injury?

(A). Is denial of access to a public airport for public use sufficient cause to give an aeronautical user Article III standing as an injured third-party beneficiary to contract obligations thus allowing the third-party to participate as an intervener to advance Federal Aviation policy or statutes by inducing compliance with Federal obligations where the public airport when used on reasonable terms is to be used without unjust discrimination to all types , kinds and classes of aeronautical users?

QUESTIONS PRESENTED

(2) When two Petitions for Review are timely filed against a final order from a Federal Agency Hearing, can the petitioner who filed last be denied the right to be an intervenor in the companion case brought by the first Petitioner if the last petitioner seeks to intervene within 30 days of filing his own Petition, but more than thirty days after the filing of the First Petition?

(3) Is the denial of a petition to participate on a "full or limited" intervention basis under Title 14, part 16.207(a) or (c) reviewable as a final collateral order affirming the ruling of the hearing officer to deny leave to participate as an intervener under 14 C.F.R. 207 that was merger within the FAA Agency Decision and Order?

PARTIES

The parties in this case are petitioner Michael R. Wood and respondent Federal Aviation Administration (FAA). Naples Airport Authority (NAA) is a primary party, in the companion case (03-1308) and has also filed a motion to be an intervener in this case 03-1375.

In addition the following parties requested to participate: National Business Aviation Association (NBAA), General Aviation Manufacturers Association (GAMA), Airport Council International-North America, Aircraft Owners and Pilot Association (AOPA), City of Naples, Collier County, Air Transportion Association of America (ATA), Airport Council International-North America, Quiet Technology Aerospace, Inc., and others in the FAA Administrative hearings.

TABLE OF CONTENTS

	Page (s)
QUESTIONS PRESENTED	i-ii
PARTIES	iii
TABLE OF CONTENTS	iv-vi
TABLE OF AUTHORITIES	vii-x
PETITION FOR A WRIT OF CERTIORARI	1-3
OPINIONS IN THIS CASE BELOW	3-4
JURISDICTION	4
STATUTORY AND REGULATIONS PROVISIONS INVOLVED	5
STATEMENT OF THE CASE	5-15
A. Introduction	5
B. Background of the Airport	6-9
C. FAA Investigation	10-11
D. FAA Administrative Proceedings	11-13
E. Petition for Review	13-15

TABLE OF CONTENTS

	Page (s)
REASONS FOR GRANTING WRIT OF CERTIORARI	15-18
A. Article III standing as a third-party beneficiaries	17
B. Order denying intervention	17-18
CONCLUSION	19

APPENDIX

	Page (s)
APPENDIX "A", United States Court of Appeals for the District of Columbia Order of Dismissal to be Reviewed, Filed May 13, 2004	App 1-9
APPENDIX "B", United States Court of Appeals for the District of Columbia Order Denying Petitioner's Right to Intervene, Filed May 13, 2004 . . .	App 3-5

TABLE OF CONTENTS

Page

APPENDIX "C",

United States Court of Appeals for the District of Columbia, Petitioners Petition for Review, Case No. 03-1375, Final Agency Decision and Order, In the Matter of Compliance with Federal Obligations by the Naples Airport Authority, Naples, Florida, FAA Order No. 2003-1, Filed October 24, 2003 . . . App 6-8

APPENDIX "D",

Federal Aviation Administration Final Agency Decision and Order, In the Matter of Compliance with Federal Obligations by the Naples Airport Authority, Naples, Florida, FAA Order No. 2003-1, Filed August 25, 2003 . . . App 9-11

APPENDIX "E",

Federal Aviation Administration Order Denying Petition of Michael R. Wood to Participate, filed May 9, 2003 . . . App 12-14

TABLE OF AUTHORITIES

Cases:	Page (s)
Brotherhood of Railroad Trainmen v. Baltimore & Ohio R. Co., 331 U.S. 519, 524 (1947)	18
City of Naples Airport Authority v. Federal Aviation Administration (FAA), Case No. 03-1308	1, 3, 13
Michael R. Wood v. Federal Aviation Administration (FAA), Case No. 03-1375	1, 3, 14
Cortese v. United States, 782 F.2d 845 (9th Cir. 1986)	8
Gladstone Realtors v. Village of Bellwood, 441 U.S. 91, 100 (1971)	16
Herandez v. Cremer, 913 F.2d 230 (5th Circit 1990)	11
International Union, UAW Local 283 v. Scofield, 382 U.S. 205, 208-209 (1965).	15
Kaisha v. U.S. Philips Corp., 510 U.S. 27, 30 (1993)	15
Miree v. DeKalb County, 433 U.S. 25, 32 (1977)	17

TABLE OF AUTHORITIES

	Page (s)
Cases:	
Stringfellow v. Concerned Neighbors in Action, 480 U.S. 370, 380 (1987)	18
Village of Arlington Heights v. Metropolitan Housing Develop. Corp., 429 U.S. 252 (1977)	11, 16
Williams v. Katz, 23 F3d 190, 191-192 (7th Cir. 1994)	4
Wing and a Pray, Inc. V. City of Jose, Case No. C-00-20018-JF, June 13, 2001	6, 9
Constitutional and Statutory Provisions:	
Article I, Section 8, clause 3 ("Commerce Clause")	10
Article III, Section 2, clause 1 ("Cases that May Come Before United States Courts")	16, 17
Article VI, clause 2 ("Supremacy Clause")	10
28 U.S.C. § 1254(1)	4
49 U.S.A. § 46110(a)	4, 5, 14
49 U.S.C. § 47106(d)(3)	2

TABLE OF AUTHORITIES

	Page (s)
49 U.S.C. § 47107(a)(1)	11
49 U.S.C. § 47107(a)(1) - (6)	11
Code of Federal Regulations Provisions:	
14 C.F.R. Part 16, Subpart F, et. seq.	5
14 C.F.R. Part 16, Subpart G, et seq.	4
14 C.F.R. Part 16.202(k)	12
14 C.F.R. Part 16.207	5, 12, 13, 18
14 C.F.R. Part 16.207(a)	5, 17, 18
14 C.F.R. Part 16.207(c)	5, 17, 18
14 C.F.R. Part 36, et seq.	9
14 C.F.R. Part 36.1	9
32 C.F.R. Part 8316, et seq.	8, 16
F.R.Civ.P. Rule 60(b)(1)-3	13
F.R.Civ.P. Rule 60(b)(6)	13

TABLE OF AUTHORITIES

	Page (s)
Other Authorities:	
Airport and Airway Improvement Act of 1982 (AAIA), P.L. 97-248	17
Airport Development Aid Program (ADAP)	8
Airport Improvement Program (AIP)	8
Civil Aeronautics Act of 1938, Section 303	7, 16
Department of Commerce Appropriation Act, 1942 (Public Law 135, 77th Congress, Title II)	16
Federal Airport Aid Program (FAAP)	8
Surplus Property Act of 1944	16
Surplus Property Act of 1944, Section 13(g)(1)(c)	7
Surplus Property Act of 1944, Section 34(a) (Saving Clause)	
War Assets Administration Regulations, 1946 Supp., Title 32, Part 8316 et. seq.	16

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a Writ of Certiorari to review the cases decided below by the United States Court of Appeals for the District of Columbia Circuit in the primary Petition for Review, Case No. 03-1308 [1/], and the companion Petition for Review, Case No. 03-1375 [2/], concerning important Federal questions that affect the National Transportation System based upon a Federally-obligated airport sponsor who is required to "make its airport available as an airport for public use ***on reasonable terms and without unjust discrimination***, to all types, kinds and classes of aeronautical users", but has banned Stage 1 aircraft or Stage 2 aircraft from using the Naples Airport thereby causing restrictions on the right to travel between public airports and "economic or non-economic" injury through discrimination that is "based upon a type of aircraft, kinds and classes of aeronautical user".

Petitioner Wood timely petitioned the District of Columbia Circuit ***to intervene*** in the primary Petition for Review (Case No. 03-1308) and petitioned ***to expand the issues*** not raised within the primary petition for review by

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[1/] *City of Naples Airport Authority v. Federal Aviation Administration (FAA)*, Case No. 03-1308.

[2/] *Michael R. Wood v. Federal Aviation Administration*, Case No. 03-1375.

filing the companion Petition for Review (Case No. 03-1375). The primary Petition for Review that was filed on September 30, 2003 by City of Naples Airport Authority pursuant to 49 U.S.C. § 47106(d)(3) (within 60 days) and 49 U.S.C. § 46110(a) (within 60 days) having been denied access to Federal funds by City of Naples Airport Authority who is "[a] person adversely affected by an order of the Secretary" under 49 U.S.C. § 47106(d)(3). See also 49 U.S.C. § 46110(a) that confers standing and jurisdiction on ("[A] person disclosing a substantial interest in an order issued by the . . . Administrator of the Federal Aviation Administration . . ."). [3]/ Petitioner Wood is a third-party beneficiaries to the FAA contracts with the City of Naples Airport Authority to advance Federal aviation policy by inducing compliance with FAA contract obligations. The Stage 1 ban and Stage 2 ban have impaired Petition Wood from using Naples Airport to travel in his aircraft and have caused "economic or non-economic" injury based upon this discrimination.

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[3]/ Title 49 U.S.C. § 46110(a) states, in relevant part, that "[A] person disclosing a substantial interest in an order issued by the . . . Administrator of the Federal Aviation Administration [ ] may apply for review of the order by filing a petition for review in the United States court of Appeals for the District of Columbia Circuit . . .. The petition must be filed not later than 60 days after the order is issued."

The motion for consolidation of the two cases was decided to be moot by the court within the order of dismissal of Case No. 03-1375 that was pending.

OPINIONS IN THIS CASE BELOW

The order of dismissal by the Court of Appeals for the District of Columbia Circuit dismissing the Petition for Review entitled *Michael R. Wood v. Federal Aviation Administration (FAA)*, Case No. 03-1375 for lack of "actual or imminent" injury was filed on Thursday, May 13, 2004. The order of dismissal is unpublished and is presented in Appendix "A". No petition for rehearing or petition for rehearing en banc was filed.

On Thursday, May 13, 2004, an order was filed denying Petitioner Wood to intervene in the primary case entitled *Naples Airport Authority (NAA) v. Federal Aviation Administration (FAA)*, Case No. 03-1308, as a third-party beneficiary for breach of FAA contract and to ***respond to the issues raised*** by petitioner Naples Airport Authority (NAA). The order is unpublished and is presented in Appendix "B". It is also raised in the companion Petition for Writ of Certiorari.

These orders are final orders that relate to this Petition for Review ***that was timely filed*** on October 24, 2003 to the United States Court of Appeals for the District of Columbia Circuit for review of the final Federal Aviation Administration (FAA) Agency Decision and Order — "In

the Matter of Compliance with Federal Obligations by the Naples Airport Authority, Naples, Florida", FAA Order No. 2003-1, (Title 14, Part 16, Subpart G), FAA Docket No. 16-01-15; DMS No. FAA-2000-15654, which was served on August 25, 2003 as allowed under Title 49 U.S.C. § 46110(a).

JURISDICTION

The order to dismiss the Petition for Review and the order denying intervenion by Petitioner Wood before the United States Court of Appeals for the District of Columbia Circuit were filed on Thursday, May 13, 2004. A Petition for Writ of Certiorari was required to be filed within 90-days of the filing of these orders on August 11, 2004. On August 18, 2004, the Honorable William H.. Rehnquist, Chief Justice, extended the time to file a Petition for Writ of Certiorari to and including September 10, 2004, based upon an application for extension of time in (Case No. 04A143 and the companion Case No. 04A144).

Dismissal of the Petition for Review of Case No. 03-1375 is final, and the denial of intervention in Case No. 03-1308 is also final with respect to the Petition for Intervention in the companion case. (See, *Williams v. Katz*, 23 F3d 190, 191-192 (7th Cir. 1994)).

The Supreme Court of the United States has jurisdiction of this cause pursuant to 28 U.S.C. § 1254(1).

STATUTE AND REGULATIONS

PROVISIONS INVOLVED

Title 49 U.S.C. § 46110(a) states, in relevant part, that "[A] person disclosing a substantial interest in an order . . . under this part may apply for review of the order by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit . . . not later than 60 days after the order is issued."

Pursuant to Congressional mandate, the FAA promulgated a regulation, 14 C.F.R. Part 16 (Rules of Practice for Federally-Assisted Airport Enforcement Proceedings), and under Subpart F - Hearings Sec. 16.207 (Intervention and other Participation.) at issue is Sec. 16.207(a) [Full Participation] "(a) A person may submit a motion for leave to intervene as a party", and under Sec. 16.207(c) [Limited Participation] "Other persons may petition the hearing officer for leave to participate in the hearing."

STATEMENT OF THE CASE

A. Introduction

This is a Petition for Writ of Certiorari to review a decision of the United States Court of Appeals for the

District of Columbia Circuit wherein the Court of Appeals did not find "actual or imminent" injury required for Article III standing. The Petitioner timely filed a Petition for Review within 60 days of the FAA order in Case No. 03-1375 and had Article III standing based upon "economic or noneconomic injury" and impairment the right to travel using Naples Airport. Petitioner timely sought intervention in Case No. 03-1308 from the last Petition filed from the FAA Order served on August 25, 2003.

There is no relevant material facts in dispute for the purposes of this petition, but there is import distinctions that relate to meanings of certain terms used in the discussion of the issues. [4/]

B. Background of the Airport

On October 14, 1941, the Collier County and City of Naples (formerly Town of Naples) which are located in

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[4/] *Wing and a Prayer, Inc. v. City of San Jose*, Case No. C-00-20018-JF, June 13, 2001, page 3, ln. 11-15, stated in relevant part that "[a] number of import distinctions among aircraft [owners and] operators. Aircraft are categorized according to both noise level (Stage 1 being the noisiest and Stage 3 the quietest) and weight (heavier airplanes being defined as "transport aircraft" and lighter airplanes as "non-transport aircraft", and aircraft operators are classified either as commercial "air carriers" or as non-commercial "general aviation" operators".

Florida entered into an agreement with the Federal Government called an "AP- 4" contract which entitled them to receive Federal funds or appropriations for "the construction, improvement and repair of public airports and public landing areas" in the United States as approved by the Administrator of the Civil Aeronautics Administration (CAA). As part of the agreement, these facilities and landing areas were to be used as necessary for national defense under a Federal program entitled "Development of Landing Areas - National Defense [DLAND]".

Concerning the "operation and maintenance" of Naples Airport (formerly Naples Army Air Field), the agreement states, in relevant part, that "[T]he airport . . . ***will at all times*** be operated for the use and benefit of the public, ***on reasonable terms and without unjust discrimination***, and without grant or exercise of any exclusive right for use of the Airport within the meaning of Section 303 of the Civil Aeronautics Act of 1938" (emphasis added.), and Naples Airport "[W]ill prevent any use of land either within or outside the boundaries of the Airport . . . or otherwise limit its use fulness as an airport."

Thereafter during World War II, the Naples Airport was taken over and used by the Federal Government for an Army Air Field. On December 13, 1946 the United States entered into an agreement to transfer Naples Army Air Field to Collier County and Town of Naples subject to the "reservations, restrictions and conditions" pursuant to the

Surplus Property Act of 1944, as amended by Section 13(g)(1)(C) with a "Savings Provision" under Sec. 34(a) that "[T]his Act . . . ***shall not be*** subject to the provisions of any other law . . ..", and the regulations of the War Assets Administration ("WAA") "reservations, restrictions and covenants" under Title 32 C.F.R. Part 8316 et. seq. ***preempting*** Collier County, City of Naples (formerly Town of Naples) it's agents, operators, or it's lessee from prohibiting Stage 1 and/ or Stage 2 aircraft flights at Naples Airport. This type of banning of aircraft is discriminatory which violates a covenant running with the land. (See, *Cortese v. United States*, 782 F.2d 845 (9th Cir., Feb. 12, 1986).

On December 3, 1969, the "operating power and management" of the airport was transferred to City of Naples Airport Authority ("NAA") as a lessee under a 99-year lease where the lessee agreed to comply with "all laws . . . and regulations which may pertain or apply to the demised premises and the use thereof'.

From 1946 to year 2000, the City of Naples, Collier County and after December 3, 1969, their agent, City of Naples Airport Authority ("NAA") received federal funds under (1) Federal Airport Aid Program (FAAP), (2) Airport Development Aid Program (ADAP) and (3) Airport Improvement Program (AIP) in an amount exceeding $14,617,978 under contract obligations in which they agreed to accept these funds and gave binding commitments in the form of grant assurances regarding

the "use, operation and maintenance" of Naples Airport.

In 1991, the City of Naples Airport Authority (NAA) implemented a noise ordinance which prohibited Stage 1 aircraft flights at the Naples Airport [AR-8]. [5]/ The FAA approved this Stage 1 ban for Naples Airport. Thereafter, on February 7, 2001, the City of Naples Airport Authority passed Resolution 2001-8, banning Stage 2 aircraft flights at Naples Airport. [AR-2,Att. 9] [6]/ Both of these bans are in conflict with the contract obligations with the Federal Government where the City of Naples Airport Authority agreed to operate Naples Airport "[O]n reasonable terms

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[5]/ The designation "AR" refers to the Certified Index of FAA Administrative Record in the District Columbia Circuit.

[6]/ *Wing and a Prayer, Inc. v. City of San Jose*, Case No. C-00-20018-JF, June 13, 200, page 3, ln. 12-18, stated in relevant part that "[F]AA issued Part 36 of the Federal Aviation Regulations ("FAR"), which imposes noise regulations on aircraft. See 34 Fed. Reg. 18355 (codified at 14 C.F.R. § 36.1, et seq. (2000), hereafter "Part 36"). Part 36 was amended in 1977 to establish stricter noise standards for most newly manufactured airplanes, introducing the concept of "stages." See 42 Fed. Reg. 12360 (March 3, 1977). [FT7, omitted.] Under Part 36, as amended, aircraft meeting the original 1969 standards are categorized as "Stage 2" aircrafts, those meeting the strictest noise standards are categorized as "Stage 3,"and those meeting neither standard are categorized as "Stage 1."

and without unjust discrimination, to all types, kinds and classes of aeronautical users."

C. FAA Investigation

On October 31, 2001, David L. Bennett, FAA Director of Airport Safety and Standards, issued a Notice of Investigation to the Naples Airport Authority under 14 C.F.R. Part 16, of the Rules of Practice for Federally Assisted Airport Proceedings entitled FAA Docket No. 16-01-15. [AR-1]

On March 10, 2003, the Director of the Office of Airport Safety and Standards issued his 96 page determination that the Stage 2 ban conflicted with Naples Airport Authority (NAA) obligations under Grant Assurance No. 22, because the prohibition was unreasonable and discriminatory. Furthermore Federal law preempted the Stage 2 ban at Naples Airport [7], but for

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[7] In support of Petitioner Wood, amicus curiae Continental Aviation Services, Inc., a tenant at Naples Airport who provides worldwide charter services as a master tenant of Naples airport, was prevented from operating their Gulfstream III jet aircraft based upon Naples Airport Stage 2 ban, and thereafter, from operating any part of its business from the Naples Airport. Continental plans to address the Stage 2 ban based upon Article VI, clause 2 (the "Supremacy Clause") and Article I, Section 8, clause 3 of the United States Constitution (the "Commerce Clause") which will

reasons unclear the FAA allowed the banning of Stage 1 aircrafts. [AR-43] [8]/

Furthermore the Director of Airport Safety and Standards determined that the Stage 2 ban was inconsistent with Title 49 U.S.C. § 47107(a)(1) and Grant Assurance No. 22 entitled "Economic Nondiscrimination" which is implemented under Title 49 U.S.C. § 47107(a)(1) - (6) provides that a Federally-obligated airport sponsor "[W]ill make its airport available as an airport for public use on reasonable terms and without unjust discrimination, to all types, kinds and classes of aeronautical users". [AR-43]

D. FAA Administrative Proceedings

On March 31, 2003, City of Naples Airport

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override and invalidate the Stage 2 ban that was not reached by the FAA as an issue.

[8]/ Petitioner Wood has two Stage 1 aircrafts (Turbo Aero Commanders, model 680T, Aircraft N-Number N900RJ and N66FV) that are banned by Naples Airport causing "economic or non-economic" injury based upon discrimination. (See *Village of Arlington Heights v. Metropolitan Housing Develop. Corp.* (1977) 429 US 252) and impairment of petitioner's right to travel using his aircraft at Naples Airport. (See *Hernandez v. Cremer* (5th Circuit 1990) 913 F2d 230.)

Authority filed a Notice of Appeal, and requested a hearing. [AR-44].

On April 10, 2003, FAA Deputy Chief Counsel James W. Whitlow filed a hearing order "raising the issues" that should be addressed on page 3 and 4 pursuant to 14 C.F.R. § 16.202(k). [AR-45] Thereafter, a Pre-hearing Conference Report and Order was filed April 22, 2003, that stated on page 2 in relevant part "3) All persons seeking to participate in this proceeding pursuant to Section 16.207 must submit their petitions no later than May 1, 2003". [AR-22]

Petitioner Wood, on April 28, 2003, filed a Petition for Leave to Participate in the Hearing as allowed under 14 C.F.R. § 16.207. [AR-65] On May 5, 2003, City of Naples Airport Authority failed to serve on Wood their objection or opposition to Petitioner Wood's participation. See proof of service. [AR-72] Additionally, the FAA failed to serve on Wood their opposition or objection to Petitioner Wood's participation. See proof of service. [AR-75] Furthermore, City of Naples Airport Authority again failed to serve Petitioner Wood it's reply to FAA opposition for Wood to participate in the Hearing. See proof of service. [AR-78] On May 9, 2003, the hearing officer filed an order denying Petitioner Wood's right to participate in which he concluded that Petitioner Wood did not establish that he had any connection with the issues in these proceedings that would warrant approval of his Petition, Appendix "E". [AR-80]

On June 16, 2003, Petitioner Wood filed a Motion to Vacate or Reconsider or for Relief from Order – Extraordinary Circumstances under F.R.C.P. Rule 60(b)(1)-(3), or 60(b)(6) [AR-153], and filed his "Post Hearing Brief" based upon the issues raised within the FAA hearing order filed on April 10, 2003. [AR-152] Thereafter, the hearing officer filed on June 27, 2003 an order denying the Motion to Vacate or Reconsider finding that Petition Wood did not cite good cause. [AR-167]

On June 30, 2003, the Hearing Officer filed his Initial Decision, "In the Matter of Compliance with Federal Obligations by the Naples Airport Authority, Naples, Florida", FAA Docket No. 16-01-15. [AR-171] On July 14, 2003, Petitioner Wood filed a Notice of Appeal from the order denying participation under 14 C.F.R. § 16.207 to the Associate Administrator for Airports. [AR-171] Thereafter, City of Naples Airport Authority ("NAA") appealed the Hearing Officer's initial decision. [AR-172]

On August 25, 2003, Woodie Woodward, the Associate Administrator for Airports in the FAA, issued the final order which affirmed the Final Agency Decision and Order that was filed and served on August 25, 2003 entitled "In the Matter of Compliance with Federal Obligations by the Naples Airport Authority, Naples, Florida", FAA Order No. 2003-1, Appendix "D". [AR-179]

E. Petition for Review

On September 30, 2003, petitioner City of Naples Airport Authority filed a "Petition for Review" entitled *City of Naples Airport Authority v. Federal Aviation Administration*, Case No. 03-1308, Appendix "B".

Thereafter on October 24, 2003, petitioner Michael R. Wood filed a separate "Petition for Review" in a timely manner entitled *Michael R. Wood v. Federal Aviation Administration*, Case No. 03-1375, to expand the issues, Appendix "C".

On November 12 2003, Petitioner also filed a motion to intervene in the primary case of City of Naples Airport Authority's Petition for Review. The motion to intervene was filed within 30-days of filing his own Petition for Review to expand the issues. Both of the Petitions for Review were filed in a timely manner from the same final Federal Aviation Administration (FAA) Agency Decision and Order, served on August 25, 2003.

Petitioner Wood's Petition for Review was filed under 49 U.S.C. § 46110(a) which states "[A] person disclosing a substantial interest in an order . . . may apply for review of the order by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit". Petitioner Wood's Petition was dismissed by the appellate court on the grounds that petitioner did not have standing, but petitioner did have standing based upon

"economic or non-economic" injury as owner of said aircrafts, and impairment of plaintiff's right to travel to Naples Airport.

Furthermore, a person denied the right to intervene in a case before the court of appeals may seek Supreme Court Review of the ruling by a Petition for Writ of Certiorari. *Kaisha v. U.S. Philips Corp.*, 510 U.S. 27, 30 (1993), and this would allow the would-be intervenor technically not a "party" to have a review of the order. *International Union, UAW Local 283 v. Scofield*, 382 U.S. 205, 208-209 (1965).

REASONS FOR GRANTING WRIT OF CERTIORARI

Petitioner Wood is a private aircraft owner of two Turbo Prop Jet Aero Commanders aircrafts (N900RJ and N66FV) that are banned from using Naples Airport under the current Stage 1 ban approved by FAA. In addition, both aircraft are banned 24 hours a day under the expanded City of Naples Airport Authority Stage 2 ban. Both bans threaten impairment of Petitioner Wood's "economic and non-economic" interests, and his right to travel in his aircraft to and from Naples Airport. Additionally, Continental Aviation Services, Inc. as an amicus curiae party supporting the petitioner Wood, provides worldwide charter jet services as a master tenant of Naples Airport since 1993 with hangar facilities to

operate Stage 2 jet aircraft operations from Naples Airport.

Since June 2002, Naples Airport has prevented Continental from operating their Stage 2 jets and Stage 2 jet Gulfstream III aircraft based upon the 24 hour Stage 2 ban.

Petitioner Wood and amicus curiae Continental Aviation Services, Inc. both have Article III standing. See, *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 100 (1979) "damage or injury, or is threatened with impairment of his or her own interests"; and also see Village of Arlington Heights v. Metropolitan Housing Develop. Corp., 429 U.S. 252 (1977) "standing is satisfied by allegations of economic or non-economic injury."

Additionally, petitioner and amicus curiae Continental Aviation Services, Inc. are third-party beneficiaries of contract obligations (between the United States Government and City of Naples Airport Authority which acts as an agent for the City of Naples and Collier County) under an AP-4 contract as allowed under the Department of Commerce Appropriation Act, 1942 (Public Law, 135, 77th Congress, Title II); and in conjunction with the Civil Aeronautics Act of 1938, Section 303. Additionally, the contract obligations that run with the land concerning the military airfield under the Surplus Property Act of 1944 that were established and set forth within War Assets Administration (WAA) regulations (Code of Federal Regulations, 1946 Supp., Title 32, Sec.

8316.1 et. seq.) that require the City of Naples, Collier County and/ or their agent, City of Naples Airport Authority (NAA) to operation and maintain the airfield for public use under "terms and conditions".

Finally, City of Naples Airport Authority entered into contract obligations for receiving federal grants under the Airport and Airway Improvement Act of 1982 (AAIA), P.L. 97-248 to operate and maintain the airfield for public use under "terms and conditions" making the airport "available as an airport for public use on reasonable terms and without unjust discrimination, to all types, kinds and classes of aeronautical users" (including Stage 1 and Stage 2 aircraft on a non-discriminatory basis).

A. Article III standing as a third-party beneficiaries

The order of dismissal is in conflict with the holding in *Miree v. DeKalb County*, 433 U.S. 25, 32 (1977) "[P]rivate parties may, as third-party beneficiaries, sue for breach of FAA contracts . . . to advance federal aviation policy by inducing compliance with FAA" .

B. Order denying intervention

The order denying intervention is appealable from the final FAA order that was filed on August 25, 2003 which denied "full or limited" intervention to participate in the hearing as allowed under Title 14, C.F.R., part 16.207(a) "full participation" or part 16.207(c) "limited

participation" is reviewable as the hearing officer order ***was affirmed within the final order*** of the FAA that was appealed to the United States Court of Appeals for the District of Columbia Circuit on October 24, 2003.

Furthermore, Petitioner Wood is a member of a class of users of the public airport, and part of large group that wanted to participate in the hearing proceedings under Title 14 C.F.R. § 16.207. The order ***was not immediate appealable*** as a collateral order. *Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370, 380 (1987), but the administrative process moved on a fast track such that the final ruling relating to the intervention by the Petitioner Wood was included within the FAA Final Agency Decision and Order filed on August 25, 2003. Additionally, Petitioner has a right to intervene on a "full or limited" intervention basis under Title 14 C.F.R. § 16.207(a) or (c) such that the order denying the right to intervene is an appealable order. *Brotherhood of Railroad Trainmen v. Baltimore & Ohio R. Co.*, 331 U.S. 519, 524 (1947)

CONCLUSION

The Petition for Writ of Certiorari should be granted. as to Dismissing the Petition for Review, Case No. 03-1375, based upon lack of Article III standing and denying the right to intervene in Naples Airport Authority proceedings.

Dated: Friday, September 10, 2004.

/s/ Michael R. Wood

Michael R. Wood, Pro Se
Counsel of Record and Petitioner,
6541 Elm Street
P.O. Box 842
McLean, Virginia 22101-0842
Phone: 1-800-971-5199
Fax No.: 1-801-327-3109

APPENDIX "A"

United States Court of Appeals

For the District of Columbia Circuit

No. 03-1375 September Term, 2003

(Filed May 13, 2004)

Michael R. Wood,

Petitioner

v.

Federal Aviation Administration,

Respondent

BEFORE: Edwards, Sentelle, and Randolph, Circuit Judges

ORDER

Upon consideration of the motion to dismiss, the opposition thereto, and the reply; the motion to intervene and dismiss, the opposition thereto, and the reply; the motion to consolidated, the opposition thereto, and the reply; the motion to participate as amicus curiae, the opposition thereto, and the reply; Michael Wood's motion for proposed briefing schedule, format, in excess length limit, and filing of separate brief, and designation of case

complex under D.C. Circuit Rules, the oppositions thereto, and the reply; the motion for severance or bifurcation of issues into separate briefs, the opposition thereto, and the reply; and the motions to add change, realign or elevate status; the oppositions thereto, and the reply, it is

O R D E R E D that the motion to dismiss be granted. Petitioner seeks to challenge the FAA's decision withholding future grant funds from the Naples Airport Authority. Petitioner has not shown that he faces the kind of "actual or imminent" injury required for Article III standing to pursue such a challenge, nor that it is likely "the injury will be redressed by a favorable decision." Friends of the Earth, Inc. V. Laidlaw Environmental Services (TOC), Inc., 528 U.S. 167, 180-81 (2000)(internal quotations omitted). Furthermore, the Hearing Officer's determination denying petitioner leave to participate in the proceedings below is not reviewable. Cf. SEC v. Better Life Club of America, Inc., No. 98-5006, 1998 WL 389102 (D.C. Cir. June 1, 1998). It is

F U R T H E R O R D E R E D that the remaining motions be dismissed as moot.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

APPENDIX "B"

United States Court of Appeals

For the District of Columbia Circuit

No. 03-1308 September Term, 2003

(Filed May 13, 2004)

City of Naples Airport Authority,

Petitioner

v.

Federal Aviation Administration,

Respondent

BEFORE: Edwards, Sentelle, and Randolph, Circuit Judges

ORDER

Upon consideration of the motion of Michael Wood to intervene, the oppositions thereto, and the replies; the motion of the National Business Aviation Association, Inc. ("NBAA") and the General Aviation Manufacturers Association, Inc. ("GAMA") to intervene, the oppositions thereto, and the replies; the motion of Continental Aviation Services to participate as amicus curiae, the opposition thereto, and the reply; the motions of Air Transport

Association, Inc. ("ATA") and the Aircraft Owners and Pilot Associaiton ("AOPA") to participate as amici curiae, and the response thereto; the conditional motion of NBAA and GAMA to participate as amici curiae, the response thereto, and the reply; the request for judicial notice; the motion for consolidate, the oppositions thereto, and the reply; the motion for proposed briefing schedule, format, in excess length limit, and filing of separate brief, and designation of case complex under D.C. Circuit Rules, the oppositions thereto, and the reply; the motions to add, change, realign or elevate status, the oppositions thereto, and the reply, it is

ORDERED, that the of Michael R. Wood to intervene be denied. Wood has not demonstrated good cause for failing to timely seek intervention. See, Fed. R. App. P. 15(d) & 26(b). It is

FURTHER ORDERED that the motion of NBAA and GAMA to intervene be denied. Intervenors must have standing under Article III of the Constitution. See Roeder v. Islamic Republic of Iran, 333 F.3d 228, 233 (D.C. Cir. 2003); Fund for the Animals, Inc. V. Norton, 322 F.3d 728, 731-32 (D.C. Cir. 2003). NBAA and GAMA have not shown that it is "likely" their injury will be "a redressed through a favorable decision." See Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992) (quotations omitted); Sierra Club v. EPA, 292 F.3d 895, 898 (D.C. Cir. 2002). It is

FURTHER ORDERED that the conditional motion of NBAA and GAMA to participate as amici curiae, and the motions of AOPA, ATA, and Continental to participate as amici curiae, be granted. See Fed. R. App. P. 29; D.C. Cir.

Rule 29. Amici are directed to join in a single brief, limited to 7,000 words. See D.C. Cir. Rule 29(d); D.C. Circuit Handbook of Practice and Internal Procedure at 38 (2002). It is

FURTHER ORDERED that the amici curiae in support of petitioner show cause, within 15 days of the date of this order, why they should not be required to file a join brief not to exceed 7,000 words. It is

FURTHER ORDERED that the remaining motions be dismissed as moot.

Per Curiam

APPENDIX "C"

United States Court of Appeals

For the District of Columbia Circuit

No. 03-1375 September Term, 2003

(Filed October 24, 2003)

Michael R. Wood,

Petitioner

v.

Federal Aviation Administration,

Respondent

PETITION FOR REVIEW

PLEASE TAKE NOTICE that Petitioner Michael R. Wood, In Pro Per, hereby petitions the United States Court of Appeals, for the District of Columbia Circuit court for review of the Final Federal Aviation Administration (FAA) Agency Decision and Order — "In the Matter of Compliance with Federal Obligations by the Naples Airport Authority, Naples, Florida", FAA Order No. 2003-1 (Title 14, Part 16, Subpart G), FAA Docket No. 16-01-15; DMS No. FAA-2000-15654, Served/ Entered on August 25, 2003, attached (front

page only of decision and order) and marked as Exhibit "A", and from the whole of said agency decision and oreder as allowed under Title 49, Section 46110(a) by filing a petition for review.

Dated: Thursday, October 23, 2003.

/s/ Michael R. Wood

Michael R. Wood,
Petitioner In Pro Per
P.O. Box 280 867
San Francisco, California 94128-0867
Phone: 1-800-971-5199
Fax: 1-801-327-3109

Petition for Review – Exhibit "A"

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.

IN THE MATTER OF COMPLIANCE WITH FEDERAL OBLIGATIONS BY THE NAPLES AIRPORT AUTHORITY, NAPLES, FLORIDA

FAA Order No. 2003-1
(Part 16, Subpart G)
FAA Docket No. 16-01-15; DMS No. FAA-2000-15654
Served: August 25, 2003

FINAL AGENCY DECISION AND ORDER

Introduction

The City of Naples Airport Authority (NAA) prohibited Stage 2 aircraft flights at Naples Airport. After conducting an investigation, FAA's Director of Airport Safety and Standards, David Bennett, issued his determination [FN 1] on March 10, 2003, concluding that Federal law preempts the Stage 2 ban at Naples Airport. He determined further that the ban was inconsistent with 49 U.S.C. § 47107(a)(1) [FN 2] and Grant Assurance No. 22, [FN 3] both of . . ..[et. al.]

[Fn 1] Under 14 C.F.R. § 16.105

[Fn 2] It is provided in 49 U.S.C. § 47107(a)(1):
(a) General Written Assurance - The Administrator of the Federal Aviation Administration may approve a project grant application under this sub chapter for an airport development project only if the Administration receives written assurances, satisfactory to the Administrator that (1) the airport will be available for public use on *reasonable conditions* and *without unjust discrimination.* (Emphasis added.)

[Fn 3] Grant Assurance No. 22, "entitled 'economic nondiscrimination' implements 49 U.S.C. § 47107(a)(1)-(6),
and provides that a Federally-obligated airport sponsor "will make its airport available as an airport for public use on reasonable terms and without unjust discrimination, to all types, kinds and classes of aeronautical users." (Bennett Direct at 7.)

APPENDIX "D"

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.

IN THE MATTER OF COMPLIANCE WITH FEDERAL OBLIGATIONS BY THE NAPLES AIRPORT AUTHORITY, NAPLES, FLORIDA

FAA Order No. 2003-1
(Part 16, Subpart G)
FAA Docket No. 16-01-15; DMS No. FAA-2000-15654
Served: August 25, 2003

FINAL AGENCY DECISION AND ORDER

Introduction

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[Fn 1] Under 14 C.F.R. § 16.105

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[Fn 3] Grant Assurance No. 22, "entitled 'economic nondiscrimination' implements 49 U.S.C. § 47107(a)(1)-(6), and provides that a Federally-obligated airport sponsor "will make its airport available as an airport for public use on reasonable terms and without unjust discrimination, to all types, kinds and classes of aeronautical users." (Bennett Direct at 7.

* * * * *

(Thereafter Relevant Part on Page 20)

A hearing was held on June 3 - 9, 2003. [FN 34]

[Fn 34] In May 2003, the Hearing Officer approved the requests to participate by the National Business Aviation Association (NBAA), General Aviation Manufactures Association (GAMA), Airport Council International-North America, Aircraft Owners Association (AOPA), City of Naples, Collier County, Air Transport Association of America (ATA), and Regional Airline Association (RAA). He rejected petitions submitted by the National Organization to Insure a Sond-Controlled Environment (NOISE), Florida Airport Council, Quiet Technology Aerospace, Inc., Board of County Commissioners of Pitkin County, Colorado, City of Scottsdale, and Michael R. Wood.

APPENDIX "E"

UNITED STATES DEPARTMENT OF
TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.

IN THE MATTER OF COMPLIANCE
WITH FEDERAL OBLIGATIONS BY THE
NAPLES AIRPORT AUTHORITY,
NAPLES, FLORIDA

FAA Docket No. 16-01-15
Served: May 9, 2003

ORDER DENYING PETITION OF MICHAEL R. WOOD
TO PARTICIPATE

April 28, 2003, Michael R. Wood filed a Petition for Leave to Participate in Hearing, pursuant to 14 CFR § 16.207(c). [Fn 1]

Mr. Wood, a pro se Petitioner, asserts that he has been a Federal Archives Researcher since 1970 and owns three aircraft, two Turbo Aero Commanders and a Piper Tomahawk. He asserts that the issue in this proceeding is important to him as a Federal Archives Researcher. Petitioner refers to what he states is the history of the Naples Airport, going back to 1941 and seeks to particiate so as to ensure that the issues are fully developed. In particular, e cities to the issue of "exclusive rights". Petitioner attached to his Petition numerous exhibits which he apparently would offer at the hearing in this matter.

CONCLUSION

In light of the foregoing, NAA's appeal is denied, and the Hearing Officer's initial decision is affirmed.

ORDER

It is ordered, pursuant to the authority set forth in 49 U.S.C. § 47106(d), that until Naples Airport Authority (NAA) rescinds or takes formal action discontinuing the enforcement of the ban on Stage 2 aircraft operations at Naples Municipal Airport, the Federal Aviation Administration (FAA) shall withhold approval of: ■ any application submitted by NAA for amounts apportioned under 49 U.S.C § 47114(c) and (e); and ■ any application submitted by NAA for discretionary grants authorized under 49 U.S.C. § 47115. [FN 64] Signed by Woodie Woodward, Associate Administrator for Airports, Issued this 25th day of August, 2003.

[FnN 64] A person may seek judicial review in a United States Court of Appeals from a final agency decision and order of the Associate Administrator. See 14 C.F.R. § 16.247 for information regarding appeal rights.

Both parties to this proceedings have filed objects to his Petition. The Office of Aviation Safety and Standards (AAS) claims that Petitioner does not have sufficient interest in this matter to warrant participation, and notes that his interest as an aircraft owner would be represented by AOPA, which also seeks status as a participant. AAS also points out that the only issue referenced in the Petition is that of "exclusive rights", although this issue is not pending before the Hearing Officer.

NAA also points out that the issue of "exclusive rights" is not pending before the Hearing Officer, and that any argument that Petitioner would make on this question would be irrelevant to this proceedings. NAA adds that Petitioner does not explain any connection to the Director's Determination or the Stage 2 ban. Finally, NAA notes that Petitioner seeks to introduce evidence into the record, which I beyond the allowable scope of a participant's involvement.

Upon review of the pleadings, the Hearing Officer concludes that Petitioner has not established that he has any connection with the issues in this proceeding which would warrant approval of his Petition.

Accordingly, the Petition to Participate filed by Michael R. Wood is hereby DEIED.

/s/ Perry A. Kupietz

Perry A. Kupietz
Hearing Officer

[Fn 1] Petitioner misconstrues the status of a participation when he asks to participate in all stages of the proceeding. Petition, at p.8. Section 207(c) limits a participant to the filing of a post-hearing brief an reply. To the extent that Petitioner intended to request status as an intervener, his Petition is untimely. Section 207(a) requires such motions to be filed within ten days of the issuance of the Hearing Order, which in this case was issued April 10.